

TREATY TIMES

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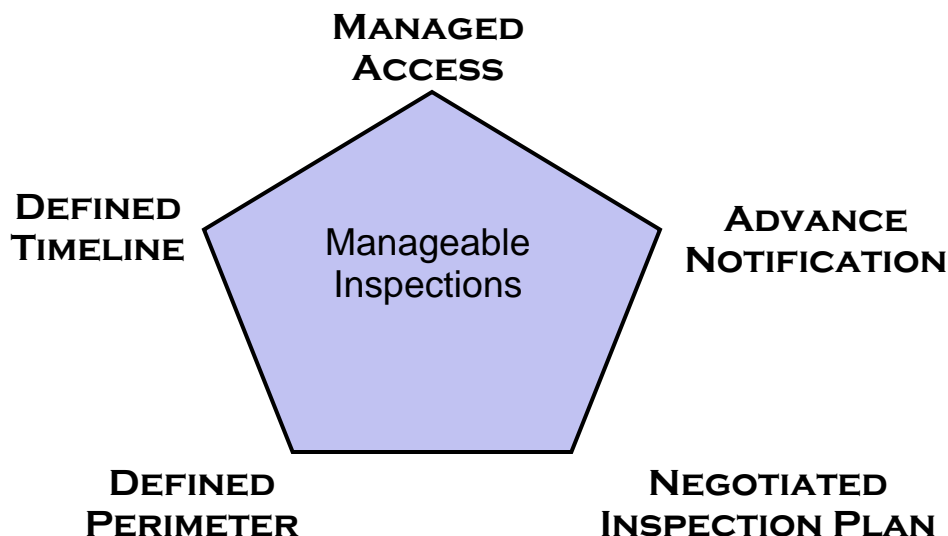


CAPTAIN'S CORNER

Anytime...Anywhere...Every Milestone

The theme of this "Treaty Times" is "inspected party rights." Over the past two decades, the United States has signed, ratified and entered into bilateral and multilateral arms control treaties that contain provisions for on-site inspections or overflights of its territory and the territories of other signatories. These inspections and overflights provide the verification aspects upon which nations count to ensure treaty compliance. Negotiations have often been hard fought as individual states crafted a careful balance between verification opportunities and protection of national security and proprietary information.

The Department of the Navy (DON) has consistently worked to influence U.S. negotiators to ensure that implementation of negotiated agreements is manageable, minimizing both risks and impacts on operations and programs. We consistently advocate five key cornerstones illustrated in this simple diagram:



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In this issue, we provide candid discussions about inspected party rights in the Chemical Weapons Convention and the Treaty on Open Skies.

Our final article is written with Program Managers in mind and discusses the requirements for both a Legal Review and an Arms Control Review of all DON programs and activities. There are differences in the two types of reviews. Both are required and obtaining one does not substitute for obtaining the other.

The Naval Treaty Implementation Program is the Navy's Treaty Compliance Center of Excellence. Please contact us with questions, comments, or training requests at 888-867-5880.

"We exist to help the fleet"

... and we bring our own charge account and funding line.

CHEMICAL WEAPONS CONVENTION (CWC)

INSPECTED PARTY RIGHTS – THE CHEMICAL WEAPONS CONVENTION

The United States and 177 other nations have agreed to a multilateral arms control agreement, the Chemical Weapons Convention (CWC), that allows for short notice, highly intrusive inspections by international inspectors, possibly at its most sensitive defense and industrial facilities, with no right of refusal once an international organization agrees it should be prosecuted. Why would these nations agree to this? Responses would no doubt vary, but two reasons would likely top most lists: first, the verification value of such an inspection is worth the potential impact; and second, a nation's own sensitive, proprietary, and national security interests can be protected.

This anytime, anywhere inspection is called a challenge inspection. The 178 nations that signed the [CWC](#) are prepared to submit to a challenge inspection, in part, because of the inspected party rights incorporated into the Convention make such a challenge inspection manageable. The DON takes the possibility of an inspection occurring at one of its facilities very seriously and is committed to maintaining DON readiness. It has developed comprehensive written guidance for response efforts, sustains a trained "fly-away" response team prepared to assist a challenged DON site, and makes available many instructional materials to those potentially affected.

This article provides an overview of the Convention-mandated inspected party rights, which allow the United States to commit to the CWC and its challenge inspection process. Italicized highlights from the Convention are described in the following section.

First, "...a [State Party](#) has the right at any time to **object to an inspector**...." Although any objection to a proposed inspector must be made prior to the initiation of an

inspection, if that individual is a known intelligence gatherer, her/his service may be prohibited.

Second, *“Each State Party has the right to **request an on-site challenge inspection** of any facility or location in the territory...of any other State Party...and to have this inspection conducted anywhere without delay....”* This right is universal. Any [signatory](#) concerned about the compliance actions of another has the challenge inspection as an option.

Third, a challenged nation is allowed formal notice *“not less than 12 hours before the arrival of the inspection team....”* This initial notice, at a minimum, will provide some indication of a challenged site’s location.

Fourth, a challenged nation has *“The right and the obligation to make every reasonable effort to **demonstrate its compliance....**”* Look at this right as “having one’s day in court.” The challenged nation may recommend things to view, persons to speak with, and documentation to review during the inspection. For example, because of ongoing chemical weapons disposal efforts, which are subject to routine inspection, the United States has the additional advantage of having routine inspector exposure to its chemical weapons safety practices. During any challenge inspection, the United States could emphasize the absence of those safety practices as evidence of the absence of chemical weapon activity.

The fifth right is a key principle: *“...the inspected State Party shall have the right to **protect sensitive installations and prevent disclosure of confidential information and data not related to chemical weapons.**”* If the inspected State Party can provide convincing rationale that installations, information, and data are not related to chemical weapons, it is under no obligation to show it to inspectors. This is a delicate point that will likely be the subject of intense negotiations should a challenge inspection be conducted. The inspected State Party has the final word on protecting sensitive items and could, if necessary, “just say no.”

A valuable tool for demonstrating compliance while protecting sensitive materials, and the sixth inspected State Party right discussed here, is “managed access.” The Convention states: *“The extent and nature of access to a particular place or places ...shall be negotiated...on a **managed access** basis.”* “Access” can mean inspection activities. Such things as walking through buildings and areas, interviewing site personnel, reviewing documents, photographing things of interest, and taking air, soil, or effluent samples are all examples of access. The inspected State Party and the inspection team engage in discussions to determine which of these activities are appropriate. Managed access allows the inspected State Party to choose how it provides access. For instance, it can shroud sensitive pieces of equipment; secure classified, sensitive, and proprietary papers in sealed containers; and guide and direct an inspector’s movement within a structure.

Seventh, “*The inspected State Party shall **designate the perimeter entry/exit points to be used for [inspector] access.***” Simply stated, the inspected State Party determines how inspectors will travel to agreed points and activities within the inspection area.

The State making the allegation has the right to send an observer to the inspection. In the most extreme circumstances, the inspected State Party may exercise a refusal of the observer. Thus, if the observer is allowed and there is a concern that the challenge was made for reasons of technology or process piracy, the inspected State Party can restrict the requesting State Party observer’s activities. Here is what the Convention says: “*the observer shall... have **access to the inspection site as granted by the inspected State Party.***”

Finally, the inspected State Party has several rights regarding the **reports** from the inspection. It has a right to review a preliminary inspection report, review the final report to edit sensitive, unrelated information, and to participate in the larger review process of the inspection team’s final report.

The signatories deemed this strong verification tool, the challenge inspection, necessary to help ensure no further development of chemical weapons and the elimination of those chemical weapons already in existence. The United States of America and the other signatories rely on the inspected State Party rights built into the convention to protect their sensitive, proprietary, and national security interests.

If you would care to review the CWC, it can be found at <http://www.opcw.org/> under “The CW Convention” tab.

CWC POC UPDATE

NTIP has produced an interactive CD as a resource tool for all Chemical Weapons Convention (CWC) Point of Contact (POC) personnel. The CD provides information you need to be aware of concerning a challenge inspection under the CWC. This CD will be mailed directly to the CWC POC.

OPEN SKIES (OS)

Inspected Party Rights

Members of the Treaty on Open Skies (OS) have the right to overfly other [States Parties](#) for the purpose of gathering information. What may not be as well understood is that the inspected party (in this case the United States) also has rights before, during, and after an overflight.

Prior to treaty implementation, the United States designated which airfields may be used for treaty mission purposes. The United States designated points of entry/exit (POE) airfields, Open Skies Airfields (OSAs), and refueling points for [OS](#) mission aircraft. Designated POEs are Travis [AFB](#) in California and Dulles International Airport in Virginia. These are the only airfields that may be used for entry into and exit out of U.S. territory. Designated [OSAs](#) are Wright-Patterson AFB in Ohio, Travis AFB in California, McConnell AFB in Kansas, and Elmendorf AFB in Alaska. All OS missions must start and end at one of these airfields, and the total flying distance is based upon the chosen airfield. Additionally, refueling may take place at Robins AFB in Georgia, Ellsworth AFB in South Dakota, or Hickam AFB in Hawaii. Although an OS mission may overnight at a refueling airfield, the mission may not start or stop there. Except in the case of an actual aircraft emergency, an OS aircraft may not use any other U.S. airfields without permission from the U.S. government.

Upon arrival of an OS aircraft at one of the [POEs](#), the United States has the right to inspect the sensor covers of the aircraft. This is done to ensure that the sensors were not used prior to the official beginning of the observation flight. While this is not a big concern in the United States, given that our designated POEs are located close to the U.S. coastline, it can be a very big issue in Europe where significant parts of a State's territory may be imaged while a mission aircraft is transiting to a POE.

The United States may also require the inspecting party perform a demonstration flight prior to conducting its mission. The purpose of the demonstration flight is to ensure that the sensors and other associated equipment do not produce better quality imagery than allowed by the Treaty. If a demonstration flight is requested, the inspecting party may remain in country an additional 24 hours to complete the Open Skies mission.

Prior to the start of a mission, the United States may recommend changes to the proposed mission plan, including alternate routes, times or altitudes to avoid hazardous airspace. **However, the observing party is not obligated to accept these proposals unless there is a credible and specific threat to the safety of the mission aircraft.**

During the overflight, the United States has the right to ensure that the mission aircraft follows all national aviation regulations during the flight. This provides a degree of control to the United States and helps ensure the safety of the OS aircraft and the integrity and safety of the U.S. airspace.

Following the overflight mission, the United States and any other State Party has the right to receive copies of the imagery taken during the flight. While this may not seem important, it provides the United States the opportunity to review and learn from possible operational security mistakes.

It is vital that Department of the Navy facilities and operational units understand these particular rights. Upon notification by the Naval Treaty Implementation Program (NTIP), each notified organization is instructed to conduct an [Impact Assessment](#) and report any impacts. It is through this process that [NTIP](#) can influence what the inspecting

party may image. It also provides an opportunity for a DON facility to mitigate any threat to its operational security. Using the checklist provided by NTIP (available at <http://www.ntip.navy.mil/osredplan022502.doc> or by contacting NT40 at 888-867-5880) organizations may prepare for the overflight and sufficiently protect U.S. interests.

This article addresses some of the U.S. rights in the treaty and shows that treaty provisions are in place for a reason. These rights provide alternatives that allow each State Party to fulfill its obligations under international arms control treaties and agreements while providing the opportunity to protect its own information and operations.

If you have any questions about inspected State Party rights under the Treaty on Open Skies or arms control and implementation of other treaties or agreements, please call the Naval Treaty Implementation Program at 888-867-5880 or email us at ntip@ssp.navy.mil.

COMPLIANCE ASSESSMENT PROGRAM (CAP)

Arms Control Assessment or Legal Review: What's the Difference?

Among their many responsibilities, DON Program Managers (PMs) are responsible for ensuring that their programs and activities comply with domestic law, customary international law, the Law of Armed Conflict (LOAC), and all arms control treaties and agreements the United States has signed. Department of Defense (DoD) directives and Secretary of the Navy (SECNAV) instructions require [PMs](#) to obtain both a legal review and an arms control compliance assessment. Within the DON, the Office of the Judge Advocate General (JAG), International and Operational Law Division (Code 10) conducts legal reviews. Strategic Systems Programs, through the Naval Treaty Implementation Program (NTIP), conducts arms control compliance assessments.

As a PM, it may be tempting to think that one review or the other will cover all of your compliance bases. This is *not* the case. Confusion can be caused by the fact that NTIP's arms control compliance assessment includes a legal review focused on arms control treaty compliance. [JAG](#) Code 10 legal reviews and NTIP arms control compliance assessments are complementary but distinct requirements. Both are necessary to fulfill your compliance obligations.

There are significant differences between JAG Code 10 legal reviews and NTIP arms control compliance assessments. JAG Code 10 conducts legal reviews on weapons and weapon systems only. JAG Code 10 assesses DON programs for compliance with domestic law, customary international law and [LOAC](#). With regard to weapons and weapon systems, customary international law and LOAC largely deal with capabilities, effects, and mode of employment. A JAG Code 10 legal review provides assurance to operational commanders of the legality for use or employment of a weapon, allowing them to focus on employment as authorized by Operational Orders and Standing Rules

of Engagement. These JAG Code 10 legal reviews are done before the system development and demonstration contract and again before the initial production contract.

NTIP conducts arms control treaty compliance assessments of all DON programs and activities, to include weapons, weapon systems, launch and delivery platforms, support systems and equipment, and Navy doctrine. NTIP's assessment specifically focuses on whether a program is in compliance with arms control treaties and agreements that the United States has signed. Such treaties and agreements address, among other things, the numbers, types, location, testing and performance characteristics of weapon systems; the numerical strength, organization, equipment, deployment or employment of armed forces; and the measures taken to reduce instability in the military environment. Acquisition programs need NTIP arms control compliance assessments at every milestone; for other activities without milestones, assessments should be done as early as possible in order to determine any arms control treaty compliance impacts.

As you can see, JAG Code 10 legal reviews and NTIP arms control compliance reviews are not the same. Neither one is an effective substitute for the other. Even if your program has already received a JAG Code 10 legal review, an NTIP arms control compliance assessment is still required and vice-versa. You will not have a complete compliance picture unless you have both reviews. And in today's world, ensuring the compliance of your program is an essential step in reducing program risk.

For more information on JAG Code 10 legal reviews or to have your program reviewed, please contact the Navy International and Operational Law Division at (703) 614-9772, DSN 224.

If you have any questions or need to have your program or activity assessed for arms control compliance, please contact us at 888-867-5880, DSN 329-9646 or at ntip@ssp.navy.mil. We also welcome requests for arms control compliance briefs tailored to your office or facility.

Glossary and Acronyms

AFB – Air Force Base
CWC – Chemical Weapons Convention
JAG – Judge Advocate General
Impact Assessment – an assessment of all operations and activities during on Open Skies overflight that could impact the flight
LOAC – Law of Armed Conflict

NTIP – Naval Treaty Implementation Program
OS – Open Skies
OSAs – Open Skies Airfield
PM – Program Managers
POE – Point of Entry/Exit
Signatory(ies) – A nation that has signed a treaty
State(s) Party(ies) – Member of the treaty

Next Issue

Treaty Impacts on the DON

Interested in receiving the Treaty Times?

In order to e-mail you and your command this newsletter and other pertinent information regarding treaty compliance and implementation, please call our office with the following information:

- Command Name
- Official Command E-mail Address
- Commanding Officer Name
- Commanding Officer Phone Number
- Treaty Point-of-Contact (POC) Name
- POC Official Business E-mail Address
- POC Phone Number

You can contact us at 301-744-4206 (DSN 354).

Feedback

How are we doing? Is there something you would like to see in the next issue? We appreciate any comments or suggestions you may have.

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